



Atty. Dkt. No. 028622-0108

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Peter JUNGBLUT et al.

Title: IDENTIFICATION OF SPECIFIC DIFFERENTIALLY
EXPRESSED MYCOBACTERIAL ANTIGENS

Appl. No.: 09/890,339

International 1/28/2000

Filing Date:

371(c) Date: 3/12/2002

Examiner: Rodney P. Swartz

Art Unit: 1645

**PETITION FOR REVIVAL OF APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The above-identified application became abandoned for failure to file a timely and proper response to the Notice of Appeal filed November 29, 2007.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Required reply and/or fee;
- (2) Petition fee (37 C.F.R. § 1.17(m));
- (3) Statement that the abandonment was unintentional; and
- (4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).

- (1) Required reply and/or fee.

The proposed Request for Continued Examination and required fee are enclosed herewith.

- (2) Petition fee (37 C.F.R. § 1.17(m))

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810.00 0P

A check in the amount of \$810.00 is enclosed for the amount stated in 37 C.F.R. § 1.17(m) to cover the fee for this petition.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

(3) Statement that the abandonment was unintentional.

Applicant hereby states that the entire delay in filing the required reply, from the due date for the reply until the filing of this petition, was unintentional.

As noted in previous filings, all of the rejections associated with this case have been addressed and overcome. In August 2007, Applicants filed a response to a Final Office Action which only contained indefiniteness rejections. This response included a new sequence listing which addressed the remaining rejections. Applicants followed up with Examiner Swartz on numerous occasions in August-October 2007 to request a notice of allowance as all of the rejections had been overcome.

On October 23, 2007, Examiner Swartz sent Foley & Lardner LLP a courtesy copy of the Notice of Allowance which is dated October 1, 2007, on the last page. Please see Exhibit A. Despite additional follow up with the Examiner, Applicants never received an official copy of the Notice of Allowance. In November 2007, Applicants were forced to file a Notice of Appeal to keep the application alive even though prosecution appeared to be closed and the Examiner had concluded the case was allowable. Applicants acted in order to keep the case pending for the Office to take care of any formalities necessary before issuance of the official Notice of Allowance.

Applicants initiated discussions with Supervisory Examiner Shannon Foley regarding this file in December 2007 and had telephone conversations with Examiner Foley around December 19, 2007, to clarify why Applicants had not officially received the notice of allowance. Applicants were assured that the Office would immediately attend to this matter.

On February 26, 2008, Foley & Lardner LLP again contacted Examiner Swartz to request an update on receipt of a Notice of Allowance. Examiner Swartz spoke to Viola Briggs, an administrative assistant from Foley & Lardner LLP, and indicated that he would be working on the case and get back to the firm in the next few days. Foley & Lardner LLP never received any follow up from Examiner Swartz.

Applicants believe the case is in condition for allowance, as exhibited by the Office's courtesy copy of the notice of allowance from over a year ago. Applicants hereby state that the entire delay in filing the required reply, from the due date for the reply until the filing of this petition, was unintentional.

(4) Any required terminal disclaimer (37 C.F.R. § 1.137(c)).

No terminal disclaimer is required in this application under 37 C.F.R. § 1.137(c) since this application was not filed before June 8, 1995.

Respectfully submitted,

Date October 20, 2008

By Richard C. Peet

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5483
Facsimile: (202) 672-5399

Richard C. Peet
Attorney for Applicant
Registration No. 35,792

EXHIBIT A

Patent and Trademark Office
Remsen Building
400 Dulany Street
Alexandria, VA 22313-1450

Date: 23 October 2007 Number of pages including cover sheet -4-

FAX

APPLICATION NUMBER: 09/890,339

TO: Benjamin Berkowitz, Reg. No. 59,349
Foley and Lardner, LLP
3000 K Street, NW, Suite 500
Washington, D.C. 20007

TELEPHONE: (202)672-5300
FACSIMILE: (202)626-5399

FROM: Rodney P. Swartz, Ph.D., Primary Examiner, Art Unit 1645
Telephone: (571) 272-0865
Facsimile: (571) 273-0865

REMARKS: Attached are courtesy copies of the Notice of Allowance for application

09/890,339

Notice of Allowability

Application No.

09/890,339

Examiner

Rodney P. Swartz, Ph.D.

Applicant(s)

JUNGBLUT ET AL.

Art Unit

1845

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 28 August 2007.
2. ☒ The allowed claim(s) is/are 44, 45, 48-57, 63-68 renumbered 1-13.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

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DETAILED ACTION

1. Applicants' Response to Final Office Action, received 28 August 2007, is acknowledged. Claims 44, 51, 63, and 66 have been amended.
2. Claims 44, 45, 48-57, and 63-68 are pending and under consideration.

Rejections Withdrawn

3. The rejection of claims 44, 45, 48-57, and 63-68 under 35 U.S.C. 112, second paragraph, as being indefinite for sequence identity of the claimed nucleotides, is withdrawn in light of the amendment of the claims.

Conclusion

4. Claims 44, 45, 48-57, and 63-68 are allowed.
5. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 9:00 AM to 7:30 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Jeffrey Siew, can be reached on (571)272-0787.


The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


RODNEY P. SWARTZ, PH.D.
PRIMARY EXAMINER
Art Unit 1645

October 1, 2007